IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3045 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SARADBHAI ANUPBHAI VASAVA - Appellant(s)

Versus

SULEMAN HASAN JIBANVA & 1 - Defendant(s)

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Appearance :
MR BALRAM D JAIN for Appellant(s) : 1,
None for Defendant(s) : 1 - 2.
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 04/10/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Admit. As the stakes of respondents are not involved in the matter, no relief is sought by the appellant

against the respondents and the matter is between the appellant and the lower court, it is not necessary to issue notice to the respondents nos. 1 and 2. We dispense with the service of notice of admission.

2. The appellant, as one of the successor of the deceased was awarded a sum of Rs. 71,611/-, but out of the same, a sum of Rs.31,611/- only was given to her with a direction that the balance amount of Rs. 40,000/- may be invested in some Fixed Deposit Receipt in the joint account of the present appellant and the Commissioner. According to the appellant, such an order could not be passed and as the appellant is in need of money for carrying out certain repairs in the house, amount should have been disbursed in favour of the appellant. It is submitted in the appeal memo that the appellant needs some more money for discharging agricultural debts.

3. Taking into consideration the submissions made by the appellant and the scope of the appeal, we are of the opinion that we are not required to make any interference in the matter at this stage, but should give liberty to the appellant to make yet another application to the learned trial court for modifying the condition imposed in the order of disbursement. The

appellant would be free to make fresh application to the trial court detailing out the reasons which persuade her to have some more money. After giving due opportunity of hearing to the appellant including the opportunity to lead evidence, the trial court shall pass a speaking order and in case the appellant satisfies the judicial conscience of the Commissioner that in the changed circumstances, she deserves some more money or full money and it is deemed desirable that the money be released in favour of the appellant, then, such order may be passed. The appeal is disposed of. Direct service is allowed.

[R.S. GARG, J.]

[K.M. MEHTA, J.]

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